IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 676 OF 2007.

Suhas Mahadeo Potdar. ... Petitioner.
Versus.
Mahadeo Maruti Potdar & others. ... Respondents.

Shri Dilip Bodake for the Petitioner.

Shri Ajay A.Joshi for the Respondent No.1.

Shri Balasaheb Bandal for the Respondent No.2.

WITH

WRIT PETITION NO. 1734 OF 2007

Mahadeo Maruti Potdar. ... Petitioner.
Versus.
Suhas Mahadeo Potdar. ... Respondent.

Shri Ajay A.Joshi for the Petitioner.

Shri Dilip Bodake for the Respondent No.1.

Shri Balasaheb Bandal for the Respondents Nos.2 to 4.

CORAM : ABHAY S.OKA, J.

DATED : 16th April, 2007.

P.C.:

1. By these writ petitions under Article 227 of the Constitution of India, the challenge is to the judgment and order dated 21st August 2006 passed by the learned Adhoc Additional District Judge, Sangli in an appeal preferred by the original Plaintiff under Order XLIII rule 1(r) of the Code of Civil Procedure, 1908. The Application made by the original Plaintiff for temporary injunction was rejected by the trial Court and therefore, the said Appeal was preferred by the original Plaintiff. The Appeal has been allowed. Writ Petition

No.676 of 2007 has been filed by the original Defendant No.1 and Writ Petition Nol.1734 of 2007 is filed by the original Plaintiff.

2. The operative part of the impugned order passed by the learned Ad-hoc Additional District Judge reads thus:

> "Appeal is allowed.
> The order passed by lower Court below Exh.6 in R.C.S.No.14/2005 dated 16.4.2005 is hereby set aside.
> Parties to bear their own costs."

A common grievance has been made in both the petitions that the operative part of the order is vague. The operative part indicates that the order below application at Exh.6 passed on 16th April 2005 has been set aside by allowing the Appeal. However, there is no indication in the operative part of the order as regards the order made by the Appellate Court on application at Exh.5 in substitution of the order dated 16th April 2005.

3. Considering the nature of the operative part of the impugned order, it is desirable that the parties should approach the Appellate court and seek necessary

clarification as regards the operative part of the impugned order. As of today the writ petitions cannot be entertained.

4. If any application/applications are made by the parties before the Appeal Court and the same are decided, it will be open for both the parties to adopt appropriate proceedings for challenging the order dated 21st August 2006 as well as the order passed on the applications seeking clarification.

5. Subject to what is stated above, writ petitions are disposed of with liberty to the parties to apply before the Appeal Court for necessary clarification of the impugned order. If such application/applications are made, the Appeal Court will decide the same as expeditiously as possible and preferably within a period of six weeks from the date of making the application/applications.

6. All contentions of the parties are kept open.

Judge.